

Before the
Federal Communications Commission
Washington, DC 20554

AUG 1 3 43 PM '05

In the Matter of)	
)	
Requests for Review)	
)	
Banning Unified School District)	File Nos. SLD-295351, 312273,
Banning, California)	226998
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: July 26, 2005

Released: July 27, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. The Telecommunications Access Policy Division has under consideration Requests for Review of three decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) concerning one Funding Year 2001 application and two Funding Year 2002 applications filed by Banning Unified School District, Banning, California (Banning).¹ SLD denied each application on the ground that Banning violated the Commission's competitive bidding requirements.² For the reasons set forth below, we grant the Requests for Review and remand Banning's applications to SLD for further consideration.

¹ Banning filed a request for appeal for its Funding Year 2001 application under File No. SLD-226998. Spectrum Communications and Cabling Services, Inc., a service provider listed in all of Banning's FCC Forms 471 referenced in this order, filed requests for appeal on behalf of Banning for Funding Year 2001 (File No. SLD-226998) and Funding Year 2002 (File Nos. SLD-295351 and 312273). See Letter from Dr. Kathy McNamara, Banning Unified School District, to Federal Communications Commission, filed October 3, 2002, regarding Funding Year 2001 FCC Form 471 No. 226998 (Banning Funding Year 2001 Appeal); Letter from Robert Rivera, Spectrum Communications and Cabling Services, Inc., to Federal Communications Commission, filed September 20, 2002, regarding Funding Year 2001 FCC Form 471 No. 226998 (Spectrum Funding Year 2001 Appeal); Letter from E. Ashton Johnson and Vincent Paladini, Piper Rudnick LLP on behalf of Spectrum Communications and Cabling Services, Inc., to Federal Communications Commission, filed June 6, 2003, regarding Funding Year 2002 FCC Form 471 Nos. 295351 and 312273 (Spectrum Funding Year 2002 Appeal) (collectively, Requests for Review).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dr. Kathy McNamara, Banning Unified School District, dated July 22, 2002, regarding FCC Form 471 No. 226998; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Joe Enserro, Banning Unified School District, dated April 7, 2003, regarding FCC Form 471 No. 312273; Letter from Schools and Libraries Division, Universal Service Administrative Company to Joe Enserro, Banning Unified School District, dated April 22, 2003, regarding FCC Form 471 No. 295351.

II. BACKGROUND

2. *Funding Year 2000.* On December 2, 1999, Banning filed its Funding Year 2000 FCC Form 470 to initiate competitive bidding for internal connections, telecommunications services, and Internet access.³ Following the bidding process, Banning and Spectrum Communications and Cabling Services, Inc. (Spectrum) entered into a three-year agreement for Spectrum's provision of internal connections.⁴ Subsequently, Banning submitted its Funding Year 2000 FCC Form 471 application and was approved to receive funding for internal connections.⁵ A Banning employee, Ms. Marta Norton, was named as the contact person for Banning's Funding Year 2000 FCC Form 470.⁶ The contact telephone number provided in Items 4b and 6c of this FCC Form 470, however, was the telephone number for Accurate Technology Group (ATG).⁷ No appeals were filed with the Administrator concerning the Funding Year 2000 applications and funding.

3. *Funding Year 2001.* On November 20, 2000, Banning filed its Funding Year 2001 FCC Form 470 to initiate competitive bidding for telecommunications services and Internet access.⁸ Banning's Funding Year 2001 FCC Form 471, filed after the completion of the competitive bidding process, listed a total of 12 Funding Request Numbers (FRNs).⁹ Nine of these FRNs originated from Banning's Funding Year 2000 FCC Form 470, and Spectrum was the named service provider.¹⁰ Of the remaining three FRNs, two referenced the Funding Year 2000 FCC Form 470, listing Verizon Internet Solutions and ATG as the respective service providers; the other referenced the Funding Year 2001 FCC Form 470 with Verizon California, Inc. as the named service provider.¹¹ An employee of ATG, Mr. Carlos Perez, was named as the contact person for Banning's Funding Year 2001 FCC Form 470.¹²

4. On August 10, 2001, before SLD issued its Funding Commitment Decision Letter (Commitment Letter) for Banning's Funding Year 2001 application, Banning submitted a Service

³ FCC Form 470, Banning Unified School District, filed December 2, 1999 (Funding Year 2000 FCC Form 470).

⁴ See Spectrum Funding Year 2002 Appeal at 2.

⁵ *Id.*

⁶ Funding Year 2000 FCC Form 470, Item 6a.

⁷ Funding Year 2000 FCC Form 470, Item 4b and 6c. The contact for Service Provider Information Number #143023665 (Accurate Technology Group), Carlos Perez, has a contact telephone number of 909-922-2705. The same telephone number is listed as the contact number on Banning's Funding Year 2000 FCC Form 470 in Items 4b and 6c.

⁸ FCC Form 470, Banning Unified School District, filed November 20, 2000 (Funding Year 2001 FCC Form 470).

⁹ See FCC Form 471, Banning Unified School District, filed January 11, 2001 (Funding Year 2001 FCC Form 471). The twelve FRNs listed in Funding Year 2001 FCC Form 471 include: 523594, 523623, 523630, 523631, 523637, 523657, 523662, 523664, 523668, 523670, 546133, and 552398.

¹⁰ FRNs originating from Banning's Funding Year 2000 FCC Form 470 include: 523623, 523630, 523631, 523637, 523657, 523662, 523664, 523668, and 523670.

¹¹ Funding Year 2001 FCC Form 471. FRN 552398 referenced Banning's Funding Year 2000 FCC Form 470 and listed Verizon Internet Solutions as the service provider. FRN 546133 referenced Banning's Funding Year 2000 FCC Form 470 and listed ATG as the service provider. FRN 523594 referenced Banning's Funding Year 2001 FCC Form 470 and listed Verizon California, Inc. as the service provider.

¹² Funding Year 2001 FCC Form 470.

Provider Information Number (SPIN) change request seeking to have ATG replace Spectrum as the service provider for Banning's network equipment maintenance.¹³ Subsequently, during the review of Banning's Funding Year 2001 application, SLD determined that a representative of a service provider (ATG) was also the contact for Banning's supporting Forms 470. SLD therefore denied funding for all FRNs in Banning's Funding Year 2001 application.¹⁴ SLD concluded that a competitive bidding violation occurred because it appeared that ATG was associated with the establishing Forms 470 and had also "participated in the competitive bidding process as a bidder."¹⁵ Banning filed a timely appeal of SLD's decision, arguing that SLD should deny only FRN 546133, which was associated with the SPIN change that resulted in ATG becoming a service provider.¹⁶ On appeal, SLD determined that a vendor, ATG, was listed as Banning's contact on the Funding Year 2000 and 2001 Forms 470, in violation of the competitive bidding rules.¹⁷ Accordingly, SLD denied Banning's appeal, concluding that all twelve funding requests citing the ineligible Forms 470 must be denied according to program rules.¹⁸ On September 20, 2002 and October 3, 2002, Spectrum and Banning appealed SLD's decision.¹⁹

5. In its Request for Review, Spectrum asks the Commission to direct SLD to either fund Banning's entire Funding Year 2001 application, including all FRNs associated with Spectrum, or, in the alternative, clarify on its website that Spectrum was not to blame for the SPIN change that resulted in a denial of funding.²⁰ Specifically, Spectrum argues that the FRNs listed in Banning's Funding Year 2001 application complied with the Commission's competitive bidding requirements.²¹ In addition, Spectrum argues that the SPIN change request was defective because (1) the request was submitted by a service provider (ATG); and (2) Spectrum was notified of the request after it had been submitted to SLD, despite specific certification requirements under the *Copan Order*.²² Spectrum states that a request to substitute

¹³ Requests for Review. The SPIN change request was made for FRN 546133. See Banning Unified School District, SPIN Change Request for FRN 546133, Form 471 Application Number 226998, received August 10, 2001.

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Carlos Perez, Banning Unified School District, dated December 28, 2001.

¹⁵ *Id.*

¹⁶ Letter from Dr. Kathy McNamara, Banning Unified School District, to Schools and Libraries Division, Universal Service Administrative Company, dated January 7, 2002. Banning does not challenge the denial of funding for FRNs 523623 and 546133, which both sought services from ATG. We note, however, that Banning mistakenly identified FRN 523623 as the FRN associated with the SPIN change when it should have identified FRN 546133.

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dr. Kathy McNamara, Banning Unified School District, dated July 22, 2002.

¹⁸ *Id.*

¹⁹ Spectrum Funding Year 2001 Appeal; Banning Funding Year 2001 Appeal.

²⁰ Spectrum Funding Year 2001 Appeal at 8-9. The FRNs associated with Banning for which Spectrum requests review are: 523630, 523631, 523637, 523657, 523662, 523664, 523668, 523670, and 552398. As noted above, Banning does not challenge the denial of funding for FRNs 523623 and 546133. See Letter from Dr. Kathy McNamara, Banning Unified School District, to Federal Communications Commission, dated September 19, 2002.

²¹ Spectrum Funding Year 2001 Appeal at 5.

²² See Spectrum Funding Year 2001 Appeal at 3. See also *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-26231, CC Docket Nos. 96-45, 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order*). In the *Copan Order*, the Commission outlined the categories of permissible SPIN changes. Specifically, the Commission stated that SPIN changes shall be permitted whenever an applicant certifies that (1) the SPIN change is

an ineligible service provider should be obvious to SLD personnel charged with examining SPIN change requests and should not be granted.²³ Spectrum asserts that the Commission should clarify its SPIN change procedures to ensure that even if an otherwise proper *Copan* certification is made, SLD should reject the SPIN change request – without prejudice to pending funding requests – when the SPIN change request is defective on its face.²⁴

6. *Funding Year 2002.* On November 23, 2001, Banning filed its Funding Year 2002 FCC Form 470, again initiating bidding for telecommunications and Internet services.²⁵ The contact person for Banning's Funding Year 2002 FCC Form 470 was a Banning employee; the contact telephone number provided on the Form was the direct line for that employee.²⁶ Banning then submitted two Funding Year 2002 Form 471 applications.²⁷ In Funding Year 2002 Form 471 No. 295351, Banning requested funding for 28 FRNs. Twenty-six FRNs referenced the Funding Year 2000 FCC Form 470, with Spectrum as the selected service provider; two FRNs referenced the Funding Year 2002 FCC Form 470, with Verizon-California, Inc. and Verizon Internet Solutions as the selected service providers.²⁸ In Funding Year 2002 Form 471 No. 312273, Banning requested funding for nine FRNs, all of which referenced the Funding Year 2000 FCC Form 470 and listed Spectrum as the service provider.²⁹ As discussed above, a Banning employee was the named contact person for the Funding Year 2000 FCC Form 470, but the contact telephone number was for ATG.³⁰ In April of 2003, SLD denied all but two FRNs listed in Banning's Funding Year 2002 applications, concluding that competitive bidding violations occurred because "the service provider associated with the establishing Forms 470 participated in the competitive bidding process as a bidder."³¹ Spectrum filed a timely appeal of SLD's decisions.³²

allowed under its state and local procurement rules and under the terms of the contract between the applicant and its original service provider, and (2) the applicant has notified its original service provider of its intent to change service providers. *Id.*

²³ See Spectrum Funding Year 2001 Appeal at 3.

²⁴ *Id.*

²⁵ FCC Form 470, Banning Unified School District, filed November 23, 2001 (Funding Year 2002 FCC Form 470).

²⁶ See Banning Funding Year 2002 FCC Form 470.

²⁷ FCC Form 471, Banning Unified School District, filed January 15, 2002 (Banning FCC Form 471 No. 295351); FCC Form 471, Banning Unified School District, filed January 16, 2002 (Banning FCC Form 471 No. 312273).

²⁸ See Banning FCC Form 471 No. 295351.

²⁹ See Banning FCC Form 471 No. 312273.

³⁰ See Banning Funding Year 2000 FCC Form 470.

³¹ See Letter from Schools and Libraries Division, Universal Service Administrative Company to Joe Enserro, Banning Unified School District, dated April 7, 2003, regarding FCC Form 471 No. 312273; Letter from Schools and Libraries Division, Universal Service Administrative Company to Joe Enserro, Banning Unified School District, dated April 22, 2003, regarding FCC Form 471 No. 295351. SLD approved funding for FRNs 774025 and 774071, which referenced Banning's Funding Year 2002 FCC Form 470. See Banning FCC Form 471 No. 295351.

³² Letter from E. Ashton Johnson and Vincent Paladini, Piper Rudnick LLP on behalf of Spectrum Communications and Cabling Services, Inc., to Federal Communications Commission, filed June 6, 2003, regarding FCC Form 471 Nos. 295351 and 312273.

III. DISCUSSION

7. The core issue underlying Banning's Funding Year 2001 and 2002 Form 471 applications is whether the contact information provided on Banning's Funding Year 2000 and 2001 Forms 470 was in fact associated with a service provider that participated in the competitive bidding process as a bidder. In the *Mastermind Order*, the Commission held that, where an FCC Form 470 lists a contact person who is an employee or representative of a service provider who participates in the competitive bidding process, the FCC Form 470 is defective.³³ The Commission observed that the contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested.³⁴ On this basis, the Commission found that when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process.³⁵ Thus, the Commission concluded that a competitive bidding violation occurs "when a service provider that is listed as the contact person on the FCC Form 470 also participates in the competitive bidding process as a bidder."³⁶ In such cases, the Administrator must deny any funding request based on that FCC Form 470.³⁷

8. After reviewing the underlying record, we find that SLD erred in denying funding for Banning's Funding Year 2001 and 2002 applications on the ground that Banning violated the competitive bidding rules. SLD appears to conclude that Banning's Funding Year 2000 and 2001 Forms 470 were defective because the contact information provided on each Form was associated with ATG, which ultimately replaced Spectrum as the service provider responsible for Banning's network equipment maintenance. Our review of the record, however, shows that ATG was not eligible to participate in the schools and libraries program in Funding Years 2000 and 2001 because it was not an eligible service provider. Specifically, the record reveals that ATG did not obtain a SPIN until February 12, 2001, *after* the conclusion of the competitive bidding process for Funding Years 2000 and 2001.³⁸ As such, ATG could not have participated in the competitive bidding process as a bidder before that time. Thus, we do not believe the presence of ATG's contact information on Banning's Funding Year 2000 and 2001 Forms 470 renders those Forms defective under the *Mastermind Order*. We therefore grant the Requests for Review and remand Banning's Funding Year 2001 and 2002 applications to SLD for further consideration.³⁹

³³ *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SPIN-143006149, CC Docket No. 96-45, 16 FCC Rcd 4028, 4032, para. 9 (2000) (*Mastermind Order*).

³⁴ *Id.* at 4033, para 10.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*, para. 9 ("to the extent a [service provider] employee was listed as the contact person on the FCC Form 470 that initiated a competitive bidding process in which [the service provider] participated, such Forms 470 were defective and violated our competitive bidding requirements. In the absence of valid Forms 470, the requests for support were properly denied.")

³⁸ See <<http://www.sl.universalservice.org/Forms/SPIN-Contact_Display.asp>> The competitive bidding process concluded on January 19, 2000 for Funding Year 2000 and on January 18, 2001 for Funding Year 2001.

³⁹ Specifically, we remand SLD's decisions on the following FRNs identified in Banning's Funding Year 2001 Form 471 No. 226998: 523594, 523630, 523631, 523637, 523657, 523662, 523664, 523668, 523670, and 552398. See Banning FCC Form 471 No. 226998. In addition, we remand decisions on a total of thirty-seven FRNs identified in Banning's Funding Year 2002 Form 471 Nos. 312273 and 295351. See Banning FCC Form 471 No.

9. In light of our decision to grant the Requests for Review, we conclude that further clarification regarding SPIN change procedures is not necessary at this time. We note, however, that the SPIN change request for FRN 546133 was not improper, as Spectrum alleges. In fact, the record shows that Banning, not ATG, submitted the SPIN change request seeking to have ATG replace Spectrum as the equipment maintenance service provider.⁴⁰ Banning submitted this SPIN change request on August 10, 2001, after the conclusion of the competitive bidding process initiated by Banning's Funding Year 2000 and 2001 Forms 470 and after ATG obtained a SPIN.⁴¹ In addition, it appears from the record that Banning complied with the certification requirements set forth in the *Copan Order*.⁴² Specifically, Banning certified that (1) the SPIN change was allowed under its state and local procurement rules and under the terms of the contract between the applicant and its original service provider, and (2) Banning notified Spectrum of its intent to change service providers.⁴³ Spectrum has not presented sufficient evidence demonstrating that the SPIN change request was improper. Nevertheless, for the reasons discussed above, we remand all FRNs associated with Spectrum, including FRN 546133, to SLD for further consideration.

10. Although we grant the instant Requests for Review, we note that the issues herein raise concerns about potential practices that could undermine the framework and intent of the competitive bidding process. The underlying policy of ensuring that schools and libraries receive the most cost-effective services eligible for universal service support under the schools and libraries mechanism is critical to the integrity of the program. Thus, we have concerns about unscrupulous entities attempting to circumvent the competitive bidding process by becoming service providers pursuant to SPIN change requests. Such actions could call into question the legitimacy of any FRNs associated with the substitute service provider and could result in a denial of funding.

312273; Banning FCC Form 471 No. 295351. As noted above, SLD approved funding for FRNs 774025 and 774071. *See supra*, n.31.

⁴⁰ *See* Banning Unified School District, SPIN Change Request for FRN 546133, Form 471 Application Number 226998, received August 10, 2001.

⁴¹ *See supra*, n.39. *See also* Banning Unified School District, SPIN Change Request for FRN 546133, Form 471 Application Number 226998, received August 10, 2001.

⁴² *See supra*, n.22.

⁴³ *See* Banning Unified School District, SPIN Change Request for FRN 546133, Form 471 Application Number 226998, received August 10, 2001.

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Requests for Review filed by Banning Unified School District on October 3, 2002, and by Spectrum Communications Cabling Services, Inc., on September 20, 2002 and June 6, 2003, ARE GRANTED and Banning FCC Form 471 Application Numbers 226998, 295351 and 312273 ARE REMANDED to SLD for further consideration as specified in this Order.

FEDERAL COMMUNICATIONS COMMISSION



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